

REMARKS

[0002] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. The status of the claims is as follows:

- Claims 1, 6-8, 13-21, 23-30 are currently pending
- Claims 15 and 16 are canceled herein
- Claims 13 and 14 are amended herein

[0003] Claim 13 has been amended to recite corrected dependency. Claim 14 has been amended to recite elements from cancelled claims 15 and 16. Accordingly, neither claim has been amended to recite new matter.

The Applicant Submits that the Prior Action Should Not Have Been Final

[0004] The Applicant respectfully submits that the Office Action mailed 09/18/2009 should not have been made "final". The Applicant respectfully submits that, while independent claims were not amended, the substance of the rejection changed from Section 102 to Section 103.

[0005] Referring to page 2 of the action, the Office notes that the arguments with respect to claims 1, 7, 13-16, 20-21, 26 and 28-30 "have been considered but are moot in view of the new grounds(s) of rejection" (OA mailed 09/18/2009, page 2, at the top). Thus, the Office changed the nature of the rejection. In particular, the Applicant notes that while the Office Action mailed 12/19/2008 rejected independent claims 14 and 21 based on Section 102(b) as being anticipated by Chen, the Action mailed 09/18/2009 rejected claims 14 and 21 as being unpatentable under Section 103(a) over Chen in view of Shipp.

[0006] However, the Applicant notes that independent claims 14 and 21 were not amended by the Applicant's last response, i.e. the response filed 04/20/2009 in response to the Office Action mailed 12/19/2008.

[0007] Accordingly, the Applicant respectfully requests that the Office reconsider the finality of the Action mailed 09/18/2009.

Cited Documents

[0008] The following documents have been applied to reject one or more claims of the Application:

- Chen: chin et al, U.S. Patent No. 5,960,170
- Shipp: Shipp, U.S. Patent No. 7,496,963

Claims 1, 7, 13-16, 20-21, 26, 28-30 Are Non-Obvious over Chen and Shipp

[0009] Claims 1, 7, 13-16, 20-21, 26, 28-30 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Chen in view of Shipp. The Applicant respectfully traverses the rejection.

Independent Claims 1, 14 and 21

[0010] Applicant submits that the Office has not made a prima facie showing that independent claims 1, 14 and 21 are obvious in view of Chen's teaching of virus detection and/or virus detection failure. The Applicant submits that Chen and Shipp, singly and in combination, fail to teach suggest at least the following elements recited by the claims (emphasis added to the final paragraph to indicate a point of discussion):

sending a file-has-no-code status when the file format of the input file was recognized and no executable code was found;

sending a file-has-code status when executable code was found;
and

sending a don't-know status when the file format of the input file was not recognized;

[0011] Claims 1, 14 and 15 recite in part, "sending a don't-know status when the file format of the input file was not recognized" (emphasis added). The Applicant respectfully submits that a "don't know" status (about the existence of executable code) is not taught or suggested by the prior art. Additionally, the Applicant respectfully submits that the prior art fails to teach or suggest failure to recognize a file format. And further, the prior art fails to teach or suggest linking a failure to recognize a file format with a "don't know" status regarding the existence of executable code in a file.

[0012] The Office cites Chen at column 8 lines 17-24 as teaching such a relationship between a "don't know" status and failure to recognize an input file format. (See, for example, the rejection of claims 15 and 16 in the Action, on page 5.) The Applicant respectfully disagrees that Chen make such a teaching.

[0013] Referring to Chen at column 8, lines 17-24, Chen teaches:

If, as a result of the iterative production, transmission and execution of virus detection objects, it is determined in step 250 that a virus is not associated with the client 300, then the client 300 or other relevant party is appropriately notified in step 265 by the virus detection server 400. However, if a virus is detected, then in step 255 the virus detection server

400 produces and transmits to the client 300 a vaccine tailored for the treatment of the type of virus that was detected.

[0014] Referring to the Chen teaching, the Applicant submits that Chen fails to address (1) the "don't know" status recited by the claim, and (2) the use of failure to recognize an input file format as triggering such a status.

[0015] First, concerning the "don't know" status, Chen teaches virus detection. In particular, column 8 lines 17-24 teach step 250, wherein a virus is not found, i.e. a "file-has-no-code" status, when it is determined if a virus is not associated with the client. Additionally, Chen teaches at step 255 wherein a virus is detected, whereupon a vaccine is tailored for treatment. However, the Applicant respectfully submits that Chen fails to teach or suggest an intermediate "don't know" status, wherein it is not known if a virus is present.

[0016] Second, the Applicant respectfully submits that nothing in Chen and/or Shipp, singly and/or in combination, teaches or suggests recognition that a file format is unknown, and/or teaches or suggests the use of a failure to recognize an input file format as a trigger for a "don't know" status.

[0017] The Office suggests that Shipp teaches searching a file to determine a file format at column 4 lines 11-35. In response, the Applicant respectfully submits that Shipp fails to teach or suggest (1) failure to determine a file type, and (2) using that failure as a trigger for anything, such as a whether a file has virus code therein.

[0018] Referring to Shipp at column 4 lines 11-35, Shipp teaches that a file-type analyzer examines the code, determining if it is program or non-program. However, Shipp fails to contemplate a failure to be able to determine the type of the file.

Accordingly, Shipp fails to teach or suggest using such a failure as a trigger for anything. In particular, Shipp fails to teach or suggest using such a failure to trigger a “don’t know” status as to executable code (i.e. a virus) in a file.

[0019] Thus, the Applicant respectfully submits that singly and in combination, Chen and Shipp fail to teach or suggest a “don’t know” status, and fail to teach or suggest failure to determine file type, and fail to teach or suggest use of such failure to trigger a “don’t know” status. Accordingly, Chen and Shipp fail to teach or suggest elements recited by claims 1, 14 and 21. Therefore, the Applicant respectfully asks that the rejection be removed.

Dependent Claims 6-8, 13, 17-20 and 23-29

[0020] Claims 6-8, 13, 17-20 and 23-29 ultimately depend from independent claims 1, 14 and 21, respectively. As discussed above, claims 1, 14 and 21 are allowable over the cited documents. Therefore, claims 6-8, 13, 17-20 and 23-29 are also allowable over the cited documents of record for at least their dependency from an allowable base claim. These claims may also be allowable for the additional features that each recites.

Conclusion

[0021] The Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the Examiner is urged to contact the undersigned representative for the Applicant before issuing a subsequent Action.

Respectfully Submitted,

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